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AMENDMENT UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 2800

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Facsimile Number: (571) 273-8300	Transmission Date:	September 13, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Seidl, *et al.* Docket No.: INF-116
Serial No: 10/724,134 Art Unit: 2823
Date Filed: December 1, 2003 Examiner: Joannie Garcia
Title: Capacitor with Electrodes Made of Ruthenium and Method for Patterning Layers
Made of Ruthenium or Ruthenium(IV) Oxide

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- Certification of Facsimile Transmission (1 page)
- Amendment Under 37 CFR § 1.116 (7 pages)
- Request for Withdrawal of Final Rejection (3 pages)

Respectfully submitted,

Kristin R. Hayes
Legal Assistant

Confirmation Respectfully Requested

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Mail Stop: After Final
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT UNDER 37 CFR § 1.116

Dear Sir:

Applicants respectfully submit the following amendments and remarks in response to Examiner's Office Action dated July 3, 2006, which Action is made final. This amendment is accompanied by a Request to Withdraw Premature Final Rejection. Entry of this amendment and allowance of all claims is respectfully requested.

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Commissioner for Patents
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REQUEST FOR WITHDRAWAL OF FINAL REJECTION

Dear Sir:

Applicants respectfully submit that the rejection of the pending application is, on its face, improper and requests that the final rejection be withdrawn. The following facts and discussion support this request.

Facts

1. On May 23, 2005, Applicants filed an Amendment. Amongst the pending claims was claim 20, which depended directly from independent claim 14.
2. A non-final rejection was presented in the Office Action mailed August 8, 2005. This Office Action indicated that claim 20 would be allowable if rewritten in independent form. *See* page 3, stating "Claims 13, 20-25, 31 and 32, are objected as being dependent upon a rejected based claim, but would be allowable if rewritten in

independent form including all of the limitations of the base claim and any intervening claims."

3. On November 8, 2005, Applicants filed an amendment in which claim 20 was placed in independent form. The amended claim 20 is identical in scope to the previously pending claim 20.

4. On July 3, 2006, a final rejection was mailed rejecting claim 20.

Discussion

Applicants respectfully submit that this final rejection was premature. The MPEP clearly states that:

Under present practice, second or any subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection* that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

MPEP § 706.07(a).


In this instance, the ground of rejection is clearly a new ground – the claim was previously allowed. Applicants' amendment did not necessitate the new ground; rather it simply rewrote the claim in independent form, as stated in the final rejection. Further no IDS has been filed in the last year so that second exception cannot apply.

Therefore, Applicants respectfully request that the final rejection be withdrawn
and the accompanying amendment be entered.

Respectfully submitted,

September 13, 2006
Date

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